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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,743	10/06/2006	Maarten Willem Driessen	DRIE0102PUSA	3586

7590 02/18/2010
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EXAMINER

SMITH, CHAIM A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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02/18/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,743	Applicant(s) DRIESSEN, MAARTEN WILLEM	
	Examiner CHAIM SMITH	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/07/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. Applicant has appointed an attorney or agent to conduct all business before the Patent and Trademark Office. Double correspondence with an applicant and applicant's attorney or agent will not be undertaken. Accordingly, applicant is required to conduct all future correspondence with this Office through the attorney or agent of record. See 37 CFR 1.33.

Information Disclosure Statement

2. The information disclosure statements filed 06 December 2007 and 20 December 2007 have not been considered. Applicant has appointed an attorney or agent to conduct all business before the Patent and Trademark Office and therefore all documents need to be submitted to the Office through the applicant's appointed representative. The information disclosure statements would be considered if resubmitted by the applicant's attorney or agent of record and no further fees would be due.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Buchanan US 1,234,279.

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5. Buchanan discloses a Chewing-bag (cartridge) made out of textile (linen fabric) and having an opening on one side (tubes), for enabling chewing of a herbal material (tobacco), the textile being not unpleasant to hold in the mouth (absolutely tasteless), being strong enough to chew on (withstand the grinding produced by chewing), having a structure that holds back pulp (encased) of the herbal material but lets through liquid and dissolved substances released therefrom (porous in nature) (page 1, ln 45 – 72).

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Derr US 6,162,516.

7. Derr discloses a Chewing-bag (pouch) (col. 9, ln 25 – 26 and col. 10, ln 36) made out of textile (cloth) (col. 9, ln 11) and having an opening on one side (fig. 4, 7, 8, 9, and 10) for enabling chewing of a herbal material (tobacco) (col. 9, ln 23 – 39 and fig. 9a). The Chewing-bag is not unpleasant to hold in the mouth (almost unnoticeable by the user, while in the mouth) (col. 6, 6 – 7) and has a structure that holds back pulp of the herbal material but lets through liquid and dissolved substances released therefrom (col. 9, ln 23 – 39). Further since said bag is made out of textile (cloth) and is designed to contain the herbal material in the mouth of a users it would be inherent that the bag is strong enough to chew on.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berry, Sr. US 5,364,348 discloses a bag structure comprised of a fine cotton mesh material that would be able to contain herbal materials and allow for chewing said bag while retaining said material and allowing liquids and dissolved

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substances to be released therefrom. Linden US 4,607,479 discloses a chewing-bag made from a textile material containing a herbal material which is filled from an opening on one side. Lambert discloses a chewing bag which contains non-tobacco herbal material for chewing in the mouth.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHAIM SMITH whose telephone number is (571)270-7369. The examiner can normally be reached on Monday-Thursday 7:30-5:00.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. S./
Chaim Smith
Examiner, Art Unit 1794
02 February 2010

/Steve Weinstein/
Primary Examiner, Art Unit 1794

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